



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

BJG

Docket No: 6031-99

4 February 2000

MAJ [REDACTED] USMC
[REDACTED]
[REDACTED]

D [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 3 February 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the report of the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board (PERB), dated 21 September 1999, and the advisory opinion from the HQMC Officer Career Counseling and Evaluation Section, officer Assignment Branch, Personnel Management Division, dated 12 October 1999, copies of which are attached.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the report of the PERB in finding that your contested fitness report should stand. Since the Board found no defect in your performance record, they had no basis to strike your failures by the Fiscal Year 2000 and 2001 Lieutenant Colonel Selection Boards. In view of the above, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records.

Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosures



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

6031-99
IN REPLY REFER TO:
1610

MMER/PERB

SEP 21 1999

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF MAJOR
[REDACTED] USMC

Ref: (a) [REDACTED] DD Form 149 of 30 Jul 99
(b) MCO P1610.7C w/Ch 1-6

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 14 September 1999 to consider Major [REDACTED] petition contained in reference (a). Removal of the fitness report for the period 940625 to 940930 (GC) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner contends that certain comments in the Section C narrative "... are adverse and plainly contradict the markings of excellent in section B." As such, he believes the report should have been referred to him for acknowledgement and the opportunity to append a statement of rebuttal. As an additional matter, the petitioner indicates he was filling a major's billet during the reporting period and amplifying comments were required per subparagraph 4007.4c(7) of reference (b). Finally, the petitioner argues that a strong personality conflict between he and the Reporting Senior precluded a fully objective evaluation of his overall performance. To support his appeal, the petitioner furnishes a letter from Lieutenant [REDACTED] Executive Officer, 7th Engineer Support Battalion during the stated period.

3. In its proceedings, the PERB concluded that the report is both administratively correct and procedurally complete as written and filed. The following is offered as relevant:

a. The petitioner's assertion that the language in Section C is adverse and also contradicts Section B markings is considered unfounded. While the petitioner chooses to selectively extract phrases and attach negative connotations with them, he fails to address his contradiction with the overall tenor of the report. The Reporting Senior is, in fact, documenting this officer's growth, adjustment, and accomplishments in an FMF command billet after almost five years of "B" billets, school, and staff time.

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)
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[REDACTED] USMC

For any appraisal to be meaningful, it must be read in its total context -- not in selected pieces as the petitioner has done. Since the report contains no evidence of any burgeoning unfavorable trends, the Board finds the report was correctly not referred to the petitioner for his acknowledgement and the opportunity to respond.

b. Notwithstanding the petitioner's own statement, we find nothing of a documentary nature to support his argument that he was filling a Major's [REDACTED] during the period covered by the report. In fact, his subsequent fitness report -- also as a Company Commander -- fails to reflect that information as well. Should the petitioner obtain material evidence to support his contention in this regard, the Board will entertain his request to add a supplementary Memorandum for the Record documenting that fact.

c. Although Lieutenant Colonel [REDACTED] advocacy statement is supportive in nature, it does not provide conclusive evidence of injustice or inaccuracy. There is nothing to support the inference that the Reporting Senior's opinion of the petitioner was biased in any way. As clearly stated in Lieutenant Colonel [REDACTED] letter: [REDACTED] had a problem locating where that point was when he should cease arguing, salute, and execute. Obviously it is the subordinate officer's responsibility to conform." As a final matter, the Board observes that the challenged fitness report is the second in a succession of three performance evaluations authored by Lieutenant Colonel [REDACTED] yet only this appraisal is being argued on the grounds of a "personality conflict."

4. The Board's opinion, based on deliberation and secret ballot vote, is that the contested fitness report should remain a part of [REDACTED]'s official military record.

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ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF MAJOR
[REDACTED] USMC

5. The case is forwarded for final action.

[REDACTED]

Colonel, U.S. Marine Corps
Deputy Director
Personnel Management Division
Manpower and Reserve Affairs
Department
By direction of the Commandant
of the Marine Corps



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
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IN REPLY REFER TO:

1600
MMAA-4
12 Oct 99

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: BCNR PETITION FOR MAJOR [REDACTED]
[REDACTED] USMC

Ref: (a) MMER Request for Advisory Opinion in the case of
Major [REDACTED] USMC
of 7 Oct 99

1. Recommend disapproval of Major [REDACTED] request for removal of his failure of selection.
2. Per the reference, we reviewed Major [REDACTED] record and petition. He failed selection on the FY00 USMC Lieutenant Colonel Selection Board. Subsequently, he unsuccessfully petitioned the Performance Evaluation Review Board (PERB) for removal of the Grade Change fitness report of 940625 to 940930. [REDACTED] requests removal of his failure of selection
3. In our opinion, the petitioned report does present competitive concern to the record. However, [REDACTED] has other areas of competitive concern in his record that more than likely led to his failure of selection.

a. **Section B Marks.** The record reflects less competitive Section B marks in Regular Duties, Additional Duties, Administrative Duties, Handling Officers, Handling Enlisted Personnel, Training Personnel, Tactical Handling of Troops, Attention to Duty, Cooperation, Initiative, Judgment, Force, Leadership, Loyalty, Personal Relations and Economy of Management.

b. **Overall Value and Distribution.** Major [REDACTED] overall Value and Distribution marks are less competitive. He has twenty-nine officers ranked above him and twenty below, placing him mid to bottom pack.

Subj: BCNR PETITION FOR MAJOR [REDACTED]

4. In summary, we believe Major [REDACTED] petition is without merit. His record received a substantially complete and fair evaluation by the Board. Had the petitioned report been removed by the PERB, his record would not have been significantly improved. Major [REDACTED] record has other areas of competitive concern beyond the petitioned report that more than likely led to his failure of selection. Therefore, we recommend disapproval of Major [REDACTED] petition for removal of his failure of selection.

5. Point of contact [REDACTED], [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
Lieutenant Colonel, U.S. Marine Corps
Head, Officer Career Counseling and
Evaluation Section
Officer Assignment Branch
Personnel Management Division